**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**BIG STONE GAP DIVISION**

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| **ISAAC T. HOCKETT, III, ET AL.,** | ) | |
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| Plaintiffs, | ) | Case No. 2:03CV00012 |
| | ) | |
| v. | ) | **OPINION AND ORDER** |
| | ) | |
| **JOHNNY R. ACOSTA, ET AL.,** | ) | By: James P. Jones |
| | ) | Chief United States District Judge |
| Defendants. | ) | |

*Timothy W. McAfee, McAfee Law Firm, P.C., Norton, Virginia, for Plaintiffs; Roy M. Jessee, Mullins, Harris & Jessee, Norton, Virginia, and Gerald L. Gray, Gerald Gray Law Firm, Clintwood, Virginia, for Defendant Johnny R. Acosta; and Steven R. Minor, Elliott Lawson & Minor, Bristol, Virginia, for Defendants Tony McAnally, Ronald J. Angelone, William Martin, and June Kimbriel.*

The plaintiffs, state correctional officers, were accused following an internal affairs investigation of assaulting an inmate. After the dismissal of state criminal charges against them, they filed the present action for damages against the investigators and their superiors in the state department of corrections. In this opinion, I resolve certain preliminary motions made by the defendants.

I

This action was initially filed in state court against a single defendant who timely removed the case to this court and moved for judgment on the pleadings.[1] After briefing and oral argument, I granted the plaintiffs leave to file an amended complaint in order to add additional allegations and defendants. In their First Amended Complaint, the four plaintiffs, Isaac T. Hockett, III, Jeffrey S. Compton, Matthew R. Hamilton, and Michael C. Bliley, allege that they were employed as correctional personnel by the Virginia Department of Corrections ("VDOC") at the Wallens Ridge State Prison, located in this judicial district. The defendants, Johnny R. Acosta, Tony McAnally, Ronald J. Angelone, William Martin, and June Kimbriel, are also alleged to have been employed by VDOC—Acosta and McAnally as internal affairs investigators; Angelone as director of VDOC; Martin as the inspector general of VDOC; and Kimbriel as an assistant inspector general.

The plaintiffs claim that an inmate at the prison named Plummer charged that Hamilton and correctional officer Kevin Reed had assaulted him on November 17, 2001, and Acosta, acting as an internal affairs investigator for VDOC, investigated this complaint. The plaintiffs assert that Acosta falsely told the local prosecutor that

[1] Jurisdiction of this court exists by reason of a federal question. *See* 28 U.S.C.A. § 1331 (West 1993).

"his investigation established that [the assault] was a planned activity by [all of the plaintiffs], and that all four had conspired to commit malicious wounding upon Inmate Plummer." (First Am. Compl. ¶ 67.) They allege that Acosta also lied to a magistrate and a grand jury about the facts in the case and concealed exculpatory evidence, such as the fact that medical tests showed no evidence of any assault on Plummer.

The plaintiffs claim that as a result of these deceptions by Acosta, who was motivated by his desire for revenge against Hockett, the state prosecutor sought and obtained indictments against the plaintiffs. During pretrial discovery, it is alleged, Acosta obstructed justice by distorting a videotape of the incident and by attempting to conceal that he had promised favors to prosecution witnesses. The prosecution eventually ended favorably for the present plaintiffs. Some of the charges were dismissed, either by the prosecutor or by the court prior to or during trial. Finally, the plaintiffs were acquitted by a jury of the remaining misdemeanor charges of assault and battery.

The plaintiffs contend that defendant McAnally was Acosta's supervisor and that he directed Acosta to obtain felony charges against the plaintiffs, even though he had not been "informed of sufficient facts by Acosta to establish probable cause for the issuance of any felony warrants." (First Am. Compl. ¶ 49.) As to defendants

Angelone, Martin, and Kimbriel, the plaintiffs allege that these defendants had the joint responsibility to train VDOC internal affairs investigators in criminal law and procedure and that they were grossly negligent in failing to do so.

Based on these allegations, the plaintiffs assert claims under 42 U.S.C.A. § 1983 (West 2003) against Acosta and McAnally under the Fourth Amendment (Count 1); against Acosta under the Fifth Amendment (Count 2); and pendent state causes of action against Acosta and McAnally for malicious prosecution (Count 5); against Acosta for defamation (Count 6); and against all the defendants for negligence (Count 7).[2]

Acosta has moved to dismiss Count 2 for failure to state a claim. McAnally has moved for a more definite statement of the malicious prosecution claim against him.

[2] The plaintiffs concede that they have not stated causes of action under Counts 3 and 4 against defendants Angelone, Martin, and Kimbriel and request that these counts be dismissed without prejudice. (Pls.' Resp. ¶ 2.) The plaintiffs also agree that they do not assert a defamation claim against any defendant except Acosta and do not seek recovery on a respondeat superior basis against any defendant. (*Id.* ¶¶ 6, 8.) Thus, the plaintiffs represent that no federal claim is asserted against Angelone, Martin, or Kimbriel. Finally, the plaintiffs agree that none of the defendants is sued in an official capacity. (*Id.* ¶ 1.)

The remaining defendants have moved to dismiss the state law negligence count for failure to state a claim.[3] The motions have been briefed and are ripe for decision.[4]

II

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, the plaintiff is not entitled to relief. The court may not dismiss a complaint unless the plaintiff can prove no set of facts that would entitle her to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

It is not necessary to set forth a particular legal theory, but rather a party is required only to make "a short and plain statement of the claim showing that the

[3] Angelone, Martin, and Kimbriel also move to dismiss any allegations of malicious prosecution against them, but the First Amended Complaint does not make any such claims. Count 5 alleges that Acosta's and McAnally's actions constituted malicious prosecution and does not mention the other defendants.

[4] Acosta's motion was fully briefed and argued before the First Amended Complaint was filed. I will dispense with oral argument as to the motions by the remaining defendants because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

pleader is entitled to relief." Fed. R. Civ. P. 8(a); *see also* Charles Alan Wright, *Law of Federal Courts* § 68 (5th ed. 1994). The court is obligated to construe the complaint as asserting "any and all legal claims that its factual allegations can fairly be thought to support." *Martin v. Gentile*, 849 F.2d 863, 868 (4th Cir. 1988). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

With these principles in mind, I will consider the present motions.

A

In Count 2 of the First Amended Complaint, the plaintiffs allege that their "Fifth Amendment rights to have exculpatory evidence submitted to the prosecution were violated by Acosta." (First Am. Compl. ¶ 138.) In his Motion to Dismiss this count, Acosta asserts that this claim fails as a matter of law "because the Fifth Amendment does not afford the plaintiffs the right to have exculpatory evidence submitted to the prosecution." (Acosta Mot. Dismiss ¶ 1.)[5]

[5] Alternatively, Acosta argues that the count should be dismissed on the ground of immunity because "any Fifth Amendment right to have police officers provide prosecutors with exculpatory evidence was not clearly established at the time the defendant's alleged actions occurred." (Acosta Mot. Dismiss ¶ 2.) However, in determining qualified immunity, I must first decide whether the plaintiffs have "alleged the deprivation of an actual constitutional right at all" before turning to the question of whether that right was clearly established at the time. *Wilson v. Layne*, 526 U.S. 603, 609 (1999) (internal citations

The question presented is whether the plaintiffs are able to assert a § 1983 claim under the Due Process Clause under the facts alleged for withholding exculpatory evidence from the prosecutor.[6] According to the plaintiffs, Acosta suppressed evidence favorable to the present plaintiffs during two separate time periods—prior to arrest, when he failed to disclose to the prosecutor numerous facts uncovered in his investigation that showed that the defendants did not commit any crimes; and after arrest but prior to trial, when he distorted a videotape and attempted to conceal his promises to witnesses.

As to the pre-arrest suppression of evidence, it is established in this circuit that the "Fourth Amendment provides all of the pretrial process that is constitutionally due to a criminal defendant in order to detain him prior to trial." *Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178, 184 (4th Cir. 1996). This is because "the right to be free from prosecution without probable cause [is] not a substantive due process right, but rather [is] a violation of the . . . Fourth Amendment right to be free from unreasonable seizures." *Lambert v. Williams*, 223 F.3d 257, 261 (4th Cir. 2000)

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omitted). Since I hold that Count 2 states no actionable claim, I need go no further.

[6] The plaintiffs do not claim that their rights were violated because Acosta did not disclose exculpatory evidence directly to them. That is probably because the defendants would then share the prosecutor's absolute immunity under § 1983. *See Jean v. Collins*, 155 F.3d 701, 705-07 (4th Cir. 1998), *vacated on other grounds by* 526 U.S. 1142 (1999).

(citing *Albright v. Oliver*, 510 U.S. 266 (1994)). The plaintiffs here make a claim under the Fourth Amendment in Count 1, which claim encompasses the alleged suppression of evidence leading to the plaintiffs' arrest and prosecution.

The suppression of evidence favorable to a criminal defendant may be a violation of the due process right to a fair trial, *see Taylor v. Waters*, 81 F.3d 429, 436 n.5 (4th Cir. 1996), but there is no allegation here that any of the favorable evidence in question was not available to the plaintiffs at their criminal trial. Indeed, it has been held that where a criminal defendant is acquitted, she has no due process claim under § 1983 for failure to provide exculpatory evidence by law enforcement officers. *See Morgan v. Gertz*, 166 F.3d 1307, 1310 (10th Cir. 1999); *see also Jean v. Collins*, 221 F.3d 656, 663 (4th Cir. 2000) (en banc) (affirming by an equally divided court) (Wilkinson, C.J., concurring) (noting that necessary condition of a § 1983 claim against police officers for withholding exculpatory evidence is a "constitutional injury" consisting of "a conviction resulting in loss of liberty"); *McCune v. City of Grand Rapids*, 842 F.2d 903, 907 (6th Cir. 1988) (holding that "[b]ecause the underlying criminal proceeding terminated in appellant's favor, he has not been injured by the act of wrongful suppression of exculpatory evidence.").

For these reasons, I find that the plaintiffs have not stated any claim under the Due Process Clause and thus I will dismiss Count 2.[7]

B

Defendants Angelone, Martin, and Kimbriel move to dismiss the action against them on the ground that they had no duty to train Acosta and McAnally as internal affairs investigators.[8] However, the plaintiffs allege otherwise (First Am. Compl. ¶ 18) and at this stage of the proceedings, I will accept that allegation and deny the motion.

C

Finally, McAnally seeks a more definite statement of the claims made against him pursuant to Federal Rule of Civil Procedure 12(e) on the ground that the First Amended Complaint does not specifically allege how McAnally's acts resulted in the prosecution of the plaintiffs.

Under rule 12(e), the pleading "must not be so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without

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[7] Of course, evidence that Acosta attempted during discovery to suppress favorable evidence may be admissible in support of the plaintiffs' Fourth Amendment claim as relevant to his motive or intent in initiating the prosecution.

[8] They also argue that Virginia law does not recognize the tort of negligent supervision, citing *Chesapeake & Potomac Telephone Co. v. Dowdy*, 365 S.E.2d 751, 754 (Va. 1988). However, no such claim is made in the First Amended Complaint.

prejudice to himself." 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1376 (2d ed. Supp. 2004). The First Amended Complaint in this case expressly alleges that "McAnally instructed Acosta to obtain felony warrants against the Plaintiffs." (First Am. Compl. ¶ 49.) In light of this allegation, the defendant ought to be able to properly respond. He may then utilize other pretrial procedures to ascertain more details of the plaintiffs' case against him.

III

For the foregoing reasons, it is **ORDERED** as follows:

1. The Motion to Dismiss by defendant Acosta is GRANTED and Count 2 of the First Amended Complaint is DISMISSED;
2. Counts 3 and 4 of the First Amended Complaint are DISMISSED without prejudice;
3. The Motion to Dismiss by defendants Angelone, Martin, and Kimbriel is DENIED; and
4. The Motion to Dismiss and Motion for a More Definite Statement by defendant McAnally is DENIED.

ENTER: June 3, 2004

/s/ JAMES P. JONES
Chief United States District Judge